Ref. No. 417

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA, Complainant, v. EL DORADO FURNITURE MANUFACTURING INC. D/B/A EL DORADO FURNITURE MANUFACTURER INC., Respondent.	)	8 U.S.C. §1324a Proceeding Case No. 91100239

DECISION AND ORDER GRANTING JUDGMENT
ON THE PLEADINGS
(April 2, 1992)

MARVIN H. MORSE, Administrative Law Judge

Appearance: William F. Jankun, Esq.,
for Complainant.

I. INTRODUCTION

This is an employer sanctions enforcement proceeding pursuant to 8 U.S.C. §1324a. On July 16, 1991, the Immigration and Naturalization Service (Complainant or INS) served a notice of intent to fine (NIF) on El Dorado Furniture Manufacturing Inc. (Respondent). INS alleged that Respondent employed unauthorized aliens and that Respondent failed to comply with paperwork requirements in violation of 8 U.S.C. §1324a. INS assessed civil money penalties in the sum of $18,000.00. By letter to INS also dated July 16, 1991, Respondent requested a hearing.

On December 27, 1991, INS filed a complaint in the Office of the Chief Administrative Hearing Officer (OCAHO) enclosing copies of the NIF and Respondent's hearing request. The allegations of the complaint are the same as those in the NIF. By notice of hearing issued January 3, 1992, OCAHO issued its notice of hearing which forwarded to Respondent both a copy of the complaint and of the rules of practice and procedure for cases before OCAHO administrative law judges.

In a one sentence letter dated January 24, 1992, filed January 29, addressed "To whom it may Concern," Respondent reiterated its "request for a hearing for this case," citing "case #91100239." By motion dated February 19, 1992, filed February 24,

Complainant requested a default judgment or, alternatively, a judgment on the pleadings. Complainant contended that the January 24 letter did not constitute an answer to the complaint. Alternatively Complainant contended that if the letter constituted an answer, it was inadequate, having failed to expressly deny the allegations of the complaint.

By Order on Procedure dated March 2, 1992, I held that Respondent's January 24 letter appeared to be an answer to the complaint. Accordingly, I denied so much of the February 19 motion as requested default for failure to plead or otherwise defend the case. I held, however, that INS was correct that Respondent's reply did not adequately respond to the complaint. For the benefit of Respondent, I quoted the pertinent rule of practice and procedure for cases before administrative law judges of this office. 28 C.F.R. §68.9(c)(1). I postponed ruling on Complainant's alternative request, pending Respondent's compliance with the cited regulation.

> It appears from the short handwritten letter filed by Respondent that Respondent does not understand the severity and legal significance of this proceeding. This is a civil adjudication in which Respondent may be found liable for $18,000.00 and for a cease and desist order to be issued against it. This order provides Respondent a second chance to adequately answer the complaint. The Respondent should not misuse this additional opportunity. In its answer, Respondent must expressly deny each allegation of the complaint, if it can truthfully do so. If the Respondent fails to deny an allegation, that failure will be treated as an admission of the allegation. Admissions can lead to a default judgment in favor of INS and against Respondent.
>
> Respondent may timely respond to Complainant's motion and to this Order by an amended answer and response to be filed with the judge not later than March 23, 1992. Copies of all filings must be served on INS, and a certification that such service has been made must accompany every filing with the judge.
>
> Respondent may, but is not required to, employ an attorney. In any event, Respondent will be expected in its filing to recite the authority of the person acting on behalf of respondent, and shall provide a typed or printed name, title, address and telephone number of such individual. See 28 C.F.R. §§68.7(a) and 68.33(b)(6).

> Upon receipt of an amended answer which conforms to the requirements of this order and to the OCAHO rules of practice and procedure, I will rule on Complainant's alternative motion. If I hold the amended answer to be legally sufficient, my office will schedule a telephonic prehearing conference at which the parties will be expected to discuss the issues, the potential for settlement and the scheduling, if necessary, of an evidentiary trial.

Respondent failed to make the filing contemplated by the March 3 Order on Procedure or any other filing. Instead, on March 24, 1992, a day after the filing due date, my staff received a telephone call from an individual who identified herself as Respondent's daughter. That individual asserted she had just received the order and wanted time to talk to her father's lawyer, who would not be available until the next day. By my direction, the caller was informed that I extended the opportunity to respond to the order until the next day. Respondent did not communicate further.

II. DISCUSSION

The rules of practice and procedure, Complainant's motion and the March 2 order sufficiently apprised Respondent of the consequences of its failure to take seriously the documents issued in this case. Because Respondent has failed to respond adequately and has ignored the opportunity to cure its flawed answer and because Respondent did not expressly deny the allegations of the complaint, this Decision and Order grants judgment on the pleadings to INS.

Respondent has totally failed to comply with the March 2 Order, notwithstanding the explicit directions and caveats provided to it. The telephone call by an individual who may be the daughter of the corporation's principal operati and/or principal owner is unavailing. [illegible] assuming telephone call was in good faith, compliance with the rules of practice business practices. Respondent representation before this forum Order. 28 C.F.R. §68.33(b)(6). with my order cannot be permi management.

Having characterized Respond its request for hearing as the t complaint, I now hold it insuffic insufficiency was not cured desp the March 2 order to do so. No al

been denied, expressly or otherwise, and no defense having been proffered, I deem the facts alleged to be admitted. 28 C.F.R. §68.9(c)(1). Moreover, because Respondent failed to respond by March 23 to the March 2 Order on Procedure, I deem Respondent to have abandoned its request for hearing.

> A complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned . . . a request for hearing if:
>
> (1) A party or his representative fails to respond to orders issued by the Administrative Law Judge;

28 C.F.R. §68.37(b).

III. ULTIMATE FINDINGS, CONCLUSIONS, AND ORDER

In addition to the findings and conclusions already mentioned, I make the following determinations, findings of fact, and conclusions of law:

1. That El Dorado Furniture Manufacturing Inc., a New York corporation, doing business as El Dorado Furniture Manufacturing Inc. (El Dorado) employed in the United States after November 6, 1986 the four individuals identified in Count I of the complaint, in violation of 8 U.S.C. §1324a(a) as more particularly described in that count.

2. That El Dorado employed in the United States after November 6, 1986 the 15 individuals identified in Count II of the complaint without preparing and/or presenting employment eligibility verification forms (Forms I-9) for them, in violation of 8 U.S.C.§1324a(a)(1)(B) as more particularly described in that count.

Dorado employed in the United States after
vidual identified in Count III of the
[illegible] that the individual properly completed section 1 of the Form I-9, in violation of 8 U.S.C. §1324a(a)(1)(B) as more particularly described in that count.

4. That El Dorado shall cease and desist from violating the prohibitions against hiring, recruiting or referring for a fee, or continuing to employ unauthorized aliens in violation of 8 U.S.C. §§1324a(a)(1)(A) and (a)(2).

5. That El Dorado is required to pay a civil money penalty in the sum of $8,000.00 for the violations in Count I, in the sum of $9,750.00 for the violations in Count II, and $250.00 for the violation in Count III, a total penalty in the aggregate sum of $18,000.00.

6. That this Decision and Order is the final action of the judge in accordance with 8 U.S.C. §1324a(e)(7) and 28 C.F.R. §68.52(a). As provided at 28 C.F.R. §68.53(a)(1), this action shall become the final order of the Attorney General unless, within thirty days from the date of this Decision and Order, the Chief Administrative Hearing Officer, shall have modified or vacated it. Except for ministerial or accounting corrections, the judge no longer retains power over this case. As to judicial review, see also 8 U.S.C. §1324a(e)(8), 28 C.F.R. §68.53(a)(3).

SO ORDERED.

Dated and entered this 2nd day of April 1992.

Marvin H. Morse
Administrative Law Judge